

INTER-DEPARTMENT COMMUNICATION
Building & Safety Department

TO City Council

DATE June 1, 2000

DEPARTMENT

FROM Rodger Harris

COPIES TO Mayor Don Wesely
Mike Merwick
✓Chuck Zimmerman
Rick Peo
File

DEPARTMENT Building & Safety

SUBJECT 1301 H Street - Show
Cause Hearing for Noncompliance with SP
1165A.

The property at 1301 H Street is a historic landmark, which under the terms of Special Permit No. 1165A, is allowed to be used for office and retail space. Section 27.63.400 Lincoln Municipal Code (LMC) allows for the preservation and the reuse of a historic structure and allows any use of an historic structure or site.

Special Permit No. 1165 originally allowed the reuse of this historic structure as O-1 Office District uses, under the terms of Resolution No. A-70448, adopted November 18, 1985. This original approval allowed office uses and allowed 20% of the floor area of the building to be used for other uses including retail stores and restaurants.

Special Permit No. 1165A, to increase the floor area for other uses from 20% to 50% of the building floor area, was approved by Resolution No. A-70949, adopted September 8, 1986. Resolution No. A-70949 required the use and operation of the use to be in compliance with the application, the plot plan and certain additional terms and conditions. The approved site plan shows the existing building at 1301 H Street, parking spaces to the south of the existing building and north of the alley with access from the alley, parking spaces immediately east of the existing building, at 90 degrees from an access aisle which exists between a driveway on H Street connecting to the alley to the south, and landscaping.

Resolution No. A-70949 required that before receiving building permits, the Permittee must receive approval of (a) any lease agreement covering the parking, (b) a landscape plan and (d) a parking lot lighting plan. A lease agreement for parking was approved and provided for a system of joint use of parking with an office building use and parking spaces to the east. The landscape and lighting plan were approved prior to building permit approval.

The parking area adjacent to the 1301 H Street building has been reconfigured differently, by use of repainted stall markings, than as shown on the approved site plan and as previously marked and used. The parking layout has been reconfigured, from perpendicular, to angle parking immediately adjacent the 1301 H Street building on the east, with new parallel parking spaces marked on the east side of the drive aisle, adjacent the existing 90 degree parking to the east. This current reconfiguration and use of the parking layout is not in conformance with the approved site plan and thus not in compliance with the terms of the special permit approval.

Copies of the resolution, parking lot lease agreement, site plan, plat map of the area with existing zoning, aerial view of the area, and pictures of the parking area are attached.

RESOLUTION NO. A- 70949

SPECIAL PERMIT NO. 1165A

01 WHEREAS, Ray Lineweber has submitted an application
02 designated as Special Permit No. 1165A for authority to increase
03 from 20% to 50% the total floor area permitted for retail space
04 in the historic landmark known as the "Noble-Dawes House" located
05 on the southeast corner of 13th and "H" Streets, and legally
06 described to wit:

07 Lot 6 and the west five feet of Lot 5, Block
08 150, Original Plat, Lincoln, Lancaster County,
09 Nebraska.

10 WHEREAS, the real property adjacent to the area included
11 within the plot plan for the expansion of retail space at the
12 Noble-Dawes House will not be adversely affected; and

13 WHEREAS, said plot plan together with the terms and
14 conditions hereinafter set forth are consistent with the intent
15 and purpose of Title 27 of the Lincoln Municipal Code to promote
16 the public health, safety, morals, and general welfare.

17 NOW, THEREFORE, BE IT RESOLVED by the City Council of
18 the City of Lincoln, Nebraska:

19 That the application of Ray Lineweber, hereinafter
20 referred to as "Permittee", to increase from 20% to 50% the total
21 floor area permitted for retail space in the historic landmark
22 known as the "Noble-Dawes House" located on the southeast corner
23 of 13th and "H" Streets be and the same is hereby granted under
24 the provision of Section 27.63.400 of the Lincoln Municipal Code
25 upon condition that construction and operation of said expanded
26 retail space at the Noble-Dawes House be in strict compliance
27 with said application, the plot plan, and the following additional
28 express terms, conditions, and requirements:

29 1. Before receiving building permits, the Permittee
30 shall submit and receive approval of the following:

31 a. Any lease agreement covering the parking
32 approved by the Planning Director and the
33 Director of Transportation.

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- b. A landscape plan approved by the Planning Director.
- d. A parking lot lighting plan approved by the Lincoln Electric System and the Planning Director.

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2. Prior to receiving a sign permit, the Permittee shall submit and receive approval of the following:

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- a. A revised site plan indicating the sign location and design.

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- b. An application to the Historic Preservation Commission based on a specific design, and receive a Certificate of Appropriateness.

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3. The terms, conditions, and requirements of this resolution shall be binding and obligatory upon the Permittee, his successors, and assigns. The building official shall report violations to the City Council which may revoke the special permit or take such other action as may be necessary to gain compliance.

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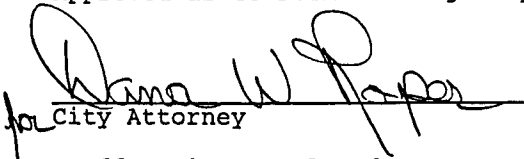
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4. The Permittee shall sign and return the City's letter of acceptance to the City Clerk within 30 days following approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The City Clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filing fees therefor to be paid in advance by the Permittee.

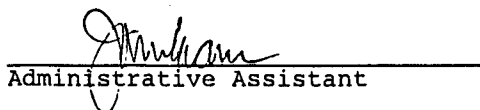
Introduced by:



Approved as to Form and Legality: AYES: Danley, Gayley, Hampton, Hoffman, Johnson, Minnick;
NAYS: Ahlschwede.


City Attorney

Staff Review Completed:


Administrative Assistant

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ADOPTED

SEP 12 1986

9:00 a.m.

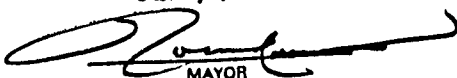
MAYOR'S OFFICE

SEP 8 1986

By City Council

APPROVED

SEP 17 1986 5:07 PM


MAYOR

James Stoll
 PLANNING DIRECTOR

12/12/86
 DATE

PARKING LOT LEASE AGREEMENT

This commercial lease agreement is entered into in Lincoln, Nebraska this 18th day of April, 1986, between HMR Development Limited Partnership, a Nebraska Limited Partnership, hereinafter Lessee, and Ray & Marjorie Knueber, HUSBAND & WIFE hereinafter Lessor all pursuant to the following terms and conditions, to wit:

(1) Lessor: The Lessor warrants that he has all right, title and authority in and to the demised property and hereby does lease to the lessee and lessee agrees to lease from lessor said demised property for the purposes of operating a parking lot.

(2) Demised Property: The real property being leased hereunder is legally described as:

The East Forty-five feet (45') of Lot Five (5), and the South Thirty feet (30') of the West Five (5) feet of Lot Five, and all of Lot 6, all in Block 150, original Lincoln, Lancaster County, Nebraska

said property is specifically drawn and reflected in the diagram attached hereto and made a part hereof by this reference as Exhibit "A". (PARKING LOT - 1313 A)

(3) Term: This lease is for a primary term of ten (10) years commencing on the 1st day of May, 1986, or when all tenants have vacated the buildings, whichever is later, and ending on the 31st day of May, 1996. Lessor shall give written notice of the commencement date five days in advance.

(4) Options:

(A) Lessor hereby grants to lessee two (2) consecutive options each for a term of five (5) years. The first option shall commence on the day following the end of the primary term hereunder and the second option shall commence on the day following the end of this first option period.

(B) To exercise each option lessee must notify the lessor in writing ninety (90) days prior to the end of the primary term or option term at lessor's address as set forth herein.

(C) If the lessee exercises the option, the terms and conditions of the lease shall remain the same except for the rent which shall be renegotiated by the parties during the ninety (90) days prior to the end of the primary term.

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(5) Rent: Lessee shall pay to Lessor an annual rent of Thirteen Thousand Two Hundred Dollars (\$13,200.00) which shall be payable in advance in monthly payments of \$1,100.00 on or before the 10th day of each month during the primary term and each option period, beginning with the month of June, 1986. Rent for the period from the commencement date stated in the notice provided by lessor under paragraph (3) to May 31, 1986, shall be due and payable computed at the rate of \$36.16 per day, and shall be paid in full on the commencement date.

(6) Use: Lessor shall have exclusive use of the parking lot on the South thirty (30) feet of the West Five feet of Lot 5, and all of Lot 6, and of enough stalls in the parking lot on the East Forty-five (45) feet of Lot 5 to bring the combined total to ten at all times. Lessee shall have exclusive use of the remainder of the parking lot on the East Forty-five (45) feet of Lot 5 for parking lot purposes between 6:00 a.m. and 6:00 p.m. each day of the primary term and option term. Between 6:00 p.m. and 6:00 a.m. lessee shall have exclusive use of only 12 parking stalls to be denominated by lessee on the parking lot on the East Forty-five (45) feet of Lot 5, and lessor shall have exclusive use of the balance of said parking lot between 6:00 p.m. and 6:00 a.m.

(7) Maintenance. Lessee and lessor shall share equally all costs of maintenance on the demised premises furnished by lessee including, by way of example and not limitation, the following: striping, surface repairs, snow removal and any landscape materials and upkeep which may be required by local ordinance, after consultation between the parties. The provisions of this paragraph shall not include the installation of the original landscaping materials, striping, and other original construction which is to be supplied by the lessee. Lessor shall have no obligation to contribute to the repair of defects in materials and workmanship in the original construction of the improvement during the first eighteen months of this lease.

(8) Taxes: Lessor shall be responsible for and pay all taxes attributable to the real estate only and not the improvements on the demised property during the primary and option terms herein.

(9) Insurance: Lessee shall carry liability insurance on the parking lots which shall insure against the usual insurable hazards covered by Broadform Umbrella Coverage, and shall name the lessor as an insured to the extent of his interest. This requirement shall not be interpreted to impose upon lessee the obligation to insure on a form of liability coverage ordinarily issued to tavern operations.

(10) Right of first refusal. Lessor hereby extends to the lessee as additional consideration for the rental hereunder an exclusive right of first refusal to purchase said demised property during the primary or option periods hereunder. Lessor shall provide lessee a copy of any bona fide offer to purchase and shall allow lessee thirty (30) days in which to exercise its rights hereunder.

(11) Improvements:

(A) Lessor hereby grants to lessee the right to construct improvements on the premises, at lessee's expense, which shall consist of the demolition of the existing structures on the premises, and the construction of flat surface parking lots in accordance with plans and specifications which have been reviewed by lessor and which are incorporated herein by this reference. The lessee shall obtain all necessary permits, and shall comply with all applicable codes and ordinances. The parking lot shall be constructed of concrete. Construction shall be carried out in a good and workmanlike manner, and the lessee shall be responsible for the correction or repair of any defects in the original materials and workmanship. Lessee shall, at lessee's cost, install landscaping materials as required by the City of Lincoln and lessee's plans and specifications, and provide striping and lane markings as may be reasonably appropriate for directing the movement of vehicles through the parking lots. The lessee shall pay all costs of improvements, shall not allow liens or encumbrances to be filed against said property for costs or expenses associated with the construction of the improvements, and shall hold lessor harmless of any cost or expense in connection therewith including securing the release of any mechanic's or materialman's liens, and any legal fees or other costs incurred by lessor which may arise as a result of lessee's non-compliance with this clause.

(B) For the duration of the lease and the option terms, the improvements constructed by the lessee shall remain the property of the lessee, and the lessee shall be entitled to depreciation expense, and shall pay all applicable property taxes assessed against the improvements. At the termination of the lease, whether because of expiration or default, the lessee shall sell and convey the improvements to the lessor for One Dollar (\$1.00).

(12) Default: The lessor shall be entitled to declare a default of this lease if the lessee fails to pay rent when due, or fails to comply with the other terms and provisions contained herein. Time is of the essence in the performance of all of the covenants contained in this lease. If the lessor concludes that the lessee is in default of the performance of any of its

obligations, the lessor shall give the lessee written notice of the default and a period of thirty days within which to correct the default. If any default is not corrected within the thirty days after notice, the lessor shall be entitled to invoke the remedies available to him under the laws of the State of Nebraska.

(13) Complete agreement: This is the complete and integrated agreement between the parties and shall be binding on their heirs and assigns.

Ray L. Lineweber
Lessor

HMR DEVELOPMENT LIMITED PARTNERSHIP

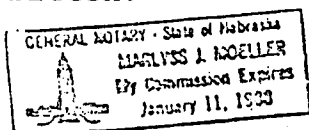
BY Roger D. Wolfe
Lessee ROGER D. WOLFE, GENERAL PARTNER

Margrita R. Lineweber
Lessor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

On this 18th day of April, 1986, before me, the undersigned a Notary Public, personally came Ray L. Lineweber, known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

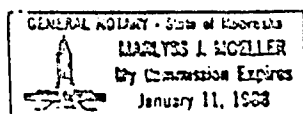


Marys J. Moeller
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

On this 18th day of April, 1986, before me, the undersigned a Notary Public, personally came Roger D. Wolfe, known to be the identical person whose name is affixed to the above and foregoing instrument, and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.



Marys J. Moeller
Notary Public

EXHIBIT 11

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CITY OF LINCOLN
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PLANNING
DEPARTMENT

1301-03	1305-07	1313	1317-19	1327	1335	715	1425 05
1306 7	1310 8			1326	11	1425 7	1425 2

1001

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142

142

ST.

1216-24	230	236	733	212
	1219-25	1227-29	2	1
				50

13th STREET

H STREET

EXG DRIVE

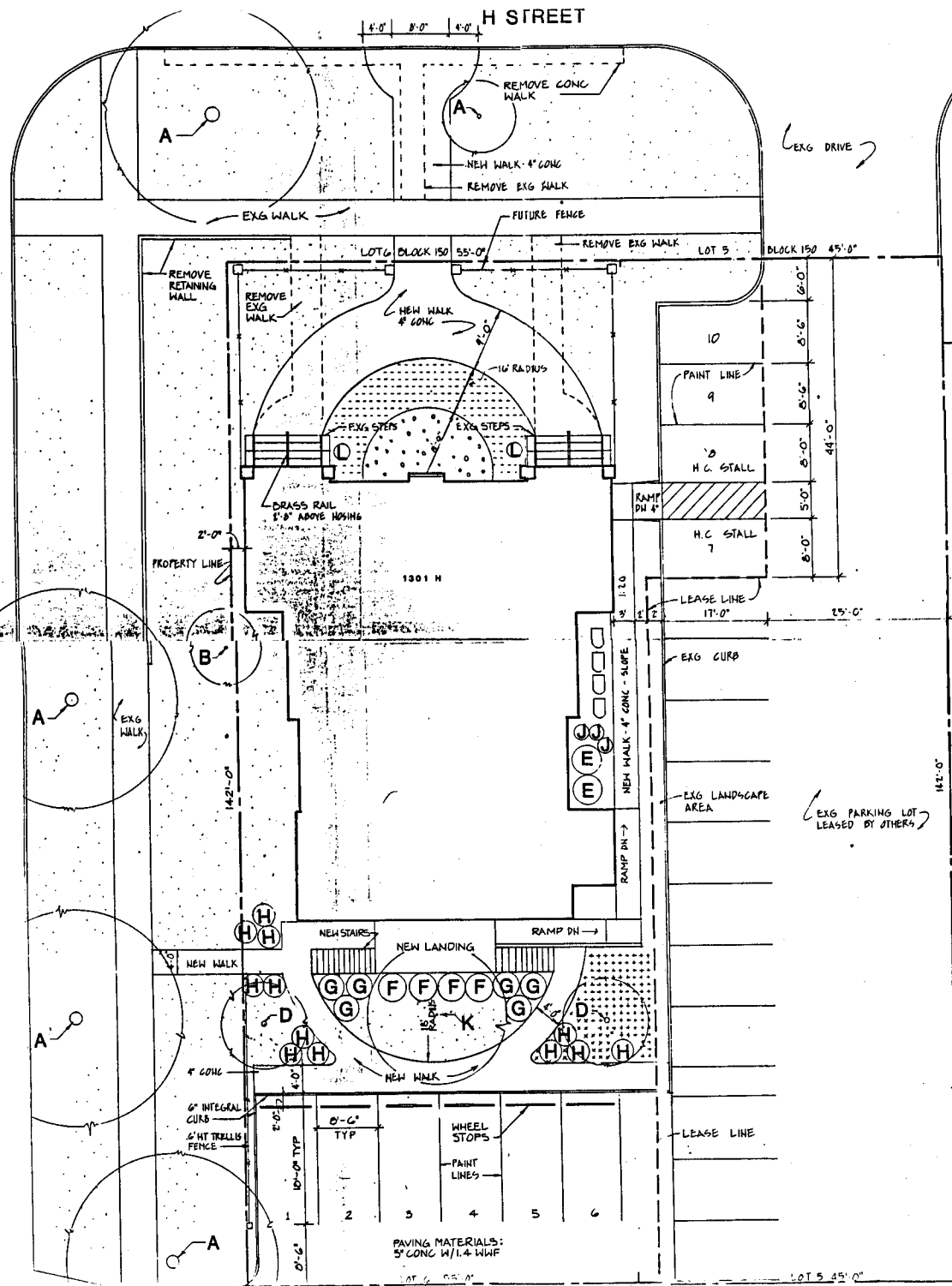
PROPERTY LINE

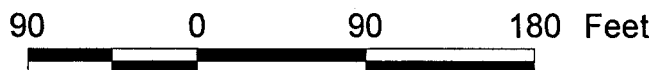
APPROVED:
CITY TRAFFIC ENGINEER'S OFFICE
Lincoln, Nebraska
Date 8/2/1986
By [Signature]

THE PLANNING DIRECTOR APPROVES THIS
PARKING LOT LAYOUT FOR 35.116
[Signature] 8/10/86
PLANNING DIRECTOR

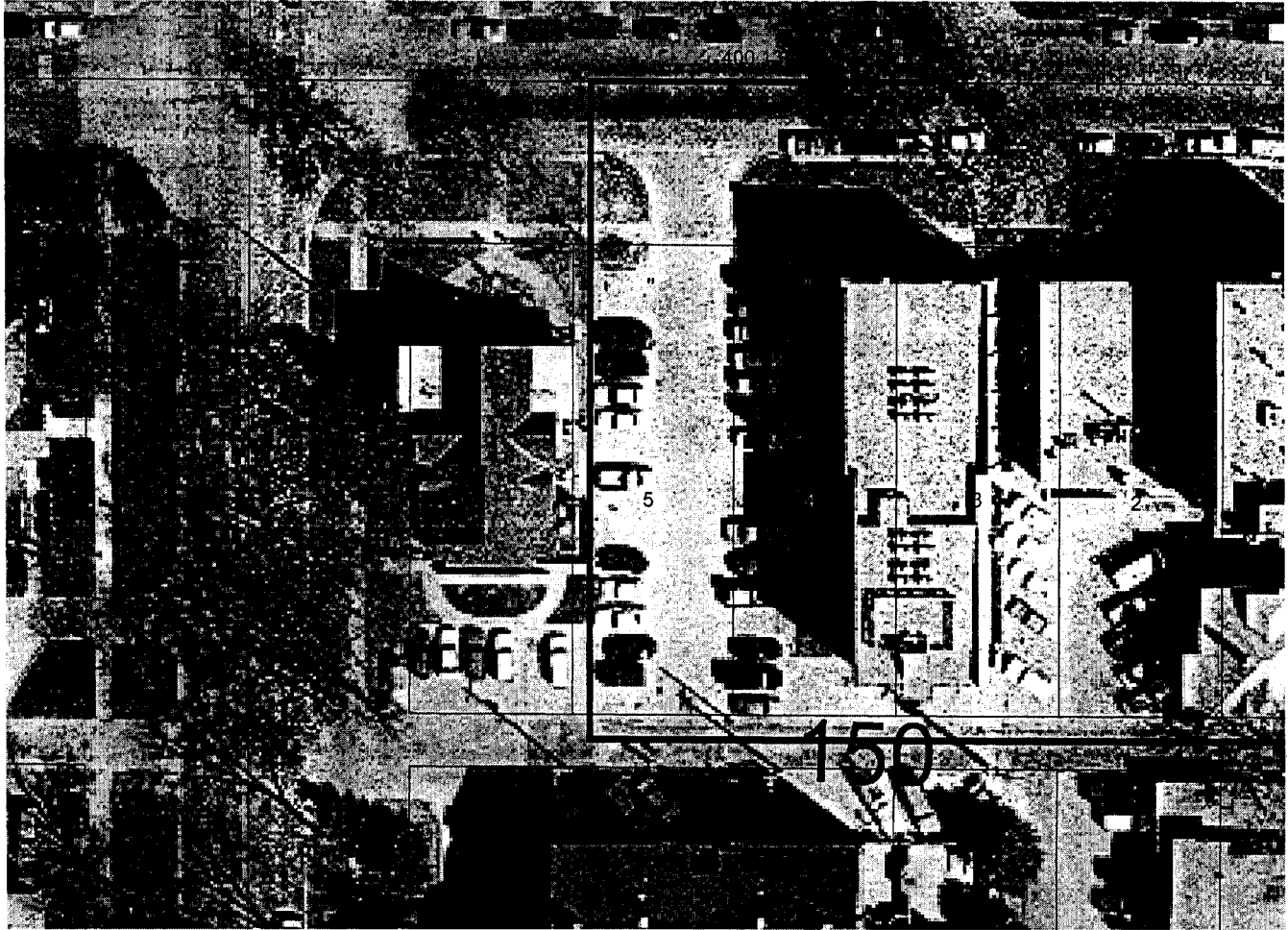
PARKING PLAN &
LANDSCAPE PLAN

SCALE: 1/8" = 1'-0"

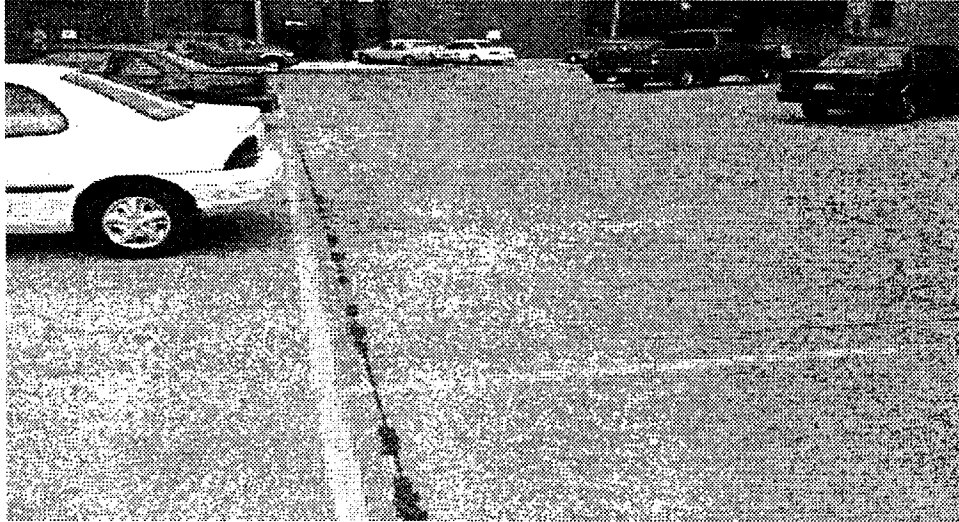




1301 "H" Street Aerial View



Parking area east of 1301 "H" Street



Painted parallel spaces - looking south



Painted angle spaces - looking northeast